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The Nota Bene

October 2012

AN INDEPENDENT STUDENT PUBLICATION OF THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

ELECTION 2012

BARACK OBAMA
MITT ROMNEY
TODD AKIN
CLAIRE MCCASKILL
TOM KAINE
GEORGE ALLEN
AND... MARY JANE!

Also:
The Latino Voter and
American Politics
by Michael Perez

The Nota Bene

AN INDEPENDENT STUDENT PUBLICATION OF THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Volume 27, Number 1: October 2012

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The Nota Bene is a monthly publication produced by students of
The George Washington University Law School. The Nota Bene serves as a forum for news,
features, and opinions in the law school community. We seek submissions from all at GW Law.

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LETTER FROM CONTRIBUTING EDITOR SAMUEL STONE

This election is special in many ways—and not because it's the most important one of our lifetime. Let's face it: like most elections, it's probably not. But let's look at what is special or unique about it. On the presidential front, Gov. Romney is the first Mormon major party candidate. President Obama is the first non-white president to run for reelection. For the first time in history, both candidates for vice president—Joe Biden and Paul Ryan—are Catholic (or non-protestant for that matter). It's also the first time a member of the House of Representatives has been on a major-party ticket since Democrat Geraldine Ferraro was Walter Mondale's running mate in 1984.

On the congressional front, this is the first non-wave election since 2004. A black, Republican woman, who also happens to be Mormon, has a real shot at being elected to Congress. We have a House race where two incumbents from the same party are challenging each other in the general election. Longtime moderate stalwarts in both parties are retiring or have been ousted from the Senate in droves, with Dick Lugar (R-IN), Joe Lieberman (I-CT), Olympia Snowe (R-ME), Ben Nelson (D-NE), and Kent Conrad (D-ND) being the prime examples. For these and many other reasons, it has been very interesting, and a real honor for me to serve as the Contributing Editor for this

Election 2012 edition of the *Nota Bene*.

Besides working with Alex Giannattasio, the *Nota Bene*'s current Editor in Chief (which has always been a pleasure), I have had the privilege of interacting with a team of great writers, many of them first-time contributors to the newspaper, and many of them 1Ls. For our 1L contributors, I know the deadline ended up coinciding with your midterms, and I can't thank you all enough for the hard work you put into your articles despite other pressures. I hope that you enjoyed working on them, and that the *Nota Bene* is lucky enough to have you working with it in the future.

I'd like to end this introduction on a personal note. On October 11, my mother's birthday, her father passed away suddenly in Cuernavaca, Mexico. Eighteen days later, my grandmother died in her home in Mexico City after a four-year struggle with melanoma. I was lucky enough to be there the moment she died. Both my grandparents were exceptional human beings; my grandmother was one of the first women to become a medical doctor in Mexico at a time when her sex was not even afforded the right to vote. Her struggle for women's rights over the years was unwavering, and I deeply admire her and her generation for that. This issue is dedicated to her.

These deaths come on the heels of some minor health issues I have been dealing with since the summer. The administration, and in particular Dean Monica Monroe, have been extremely encouraging and understanding throughout that process. They have my enduring thanks.

Alex, thanks again for the chance to work on this issue. I couldn't appreciate it more.

In this Issue

AUTHORITY (NEWS)

- 9 MISSOURI SENATE CANDIDATE KEEPING RACE COMPETITIVE DESPITE CONTROVERSIAL COMMENTS
By Paul Kanellopoulos
Seeking reelection in the state of Missouri, Senator Claire McCaskill has yet to definitively best challenger Todd Akin of "legitimate rape" infamy...

- 10 VIRGINIA: BATTLE FOR THE SENATE IN THE NEWEST SWING STATE
By Paul Kanellopoulos
Across the Potomac, former Virginia Governors Tim Kaine (D) and George Allen (R) are duking it out for former Senator Jim Webb's now vacant seat—spending more money in the process than any other senatorial campaign this year...

- 12 BERMAN AND SHERMAN: THE DEMOCRATS WHO NEED REPUBLICANS
By Lucas Botello
With names as similar as thier records, two incumbent democratic Congressmen have been pitted against each other in California's 30th District, following the adoption of new redistricting rules by the state...

- 14 THE LID IS FLYING OFF THE POT IN COLORADO
By Patrick Fortune
Amendment 64, on the Colorado ballot this year, seeks to make the Centennial State the first in the union to fully legalize marijuana...

- 15 GWU BATTLEGROUND TRACKING POLL
Press Release

PERSUASIONS (OPINION)

- 4 ELECT GOVERNOR MITT ROMNEY
By Daniel Tarvin
"Mitt Romney is not a perfect candidate, and he would not be a perfect president. But his experience as a leader and as an executive dwarfs that of President Obama."

- 5 REELECT PRESIDENT BARACK OBAMA
By Harrison Covall
"Governor Mitt Romney will be the first to tell you that his economic polic[ies]...are vastly different than those of former President George W. Bush, but these pronouncements are usually devoid of any policy specifics, save for lip service..."

- 6 POLARIZED POLITICS IN THE INTERNET AGE
By Griffin Foster
"The internet has revolutionized the way Americans get information and interact with their elected officials—resulting in a more engaged populace and a more polarized government...."

- 7 THE ELECTION AND THE NATIONAL DEBT
By A.J. Huber
"In my view, President Obama's plan will help us to reduce our deficit without jeopardizing the economic recovery...."

FEATURES

- 16 LATINOS IN AMERICA: DECISIVE DEMOGRAPHIC
OR PAPER TIGER
By Michael Perez

Today, over 50 million Americans self-identify as Hispanic or Latino. Michael Perez explores how surging demographic may factor into elections in years to come.

- 22 THE VAGARIES OF REDISTRICTING
By Lucas Botello

With the 2010 National Census behind us, Lucas Botello takes a look at how partisan state legislatures seek to use the decennial redistricting process to advantage incumbent political interests.

- 26 SPLITTING TICKETS: ELASTICITY, CANDIDATE
SELECTION, AND WAVES
By Samuel Stone

Why would someone vote for one party for President and another for Congress or Governor in the same year? The phenomenon, known as "ticket splitting," is having significant effects on the American political landscape this election season. Contributing Editor Samuel Stone tackles the issue head-on with an insightful look at root causes and consequences.



Persuasions



ROMNEY
RYAN

ELECT MITT ROMNEY

by Daniel Tarvin

Four years ago, Barack Obama swept to the presidency on a wave of enthusiasm and hope. President Obama promised to revitalize the economy and get the country moving towards a brighter future. Unfortunately, America – especially on an economic basis – has been stuck in neutral during the last few years. Unemployment has been abnormally high. Wages have been stagnant (if not declining altogether), and the middle class has been “buried” (in the words of President Obama’s own vice president, Joe Biden).

Perhaps most damning is the absolute explosion of the federal budget deficit and national debt that has occurred during the last few years. Under President Obama, the United States has run deficits in the trillions each and every year. As a result, over \$6 trillion has been added to our national debt in less than four years, and there is little sign that this economic calamity will reverse itself in a second term. The end result will be a tremendous financial burden that will be passed on to future generations, including our own.


Mitt Romney is not a perfect candidate, and he would not be a perfect president. But his experience as a leader and as an executive dwarfs that of President Obama. Mr. Romney has spent much of his career in business, where he was successful in turning around companies such as Staples and Sports Authority. Romney’s business resume and knowledge of how the economy works would be vital, considering the economic quandary that the next president will inherit upon taking office in January 2013. Unlike President Obama in 2008, Gov. Romney would head into the presidency with executive experience in government. In a largely successful four-year stint as governor of

Massachusetts, Gov. Romney reached across party lines in a very blue state to solve many problems, including a large budget deficit that he inherited, but helped turn into a surplus by the time he left office.

Perhaps Gov. Romney’s greatest work was as the head of the organizing committee for 2002 Salt Lake City Winter Olympics. When he was appointed the President and CEO of the Salt Lake Organizing Committee in 1999, the Games were headed towards disaster. A massive scandal in the late 1990s and budget mismanagement had left the Salt Lake Games nearly bankrupt and in ruins. Few had hope that the Games would be successful. However, Gov. Romney took charge and turned around an organization that was nearly half a billion dollars in the red. The Games ended up becoming an enormous success even after September 11th caused security costs for the Games to soar, and despite the huge initial deficit.

Throughout all of his professional life, Mitt Romney has had a knack for taking over struggling enterprises – whether businesses, the Olympics, or states – and turning them around and leaving them successful. After four years in the woods, America desperately needs that kind of leadership to revitalize the country, especially economically.

Barack Obama’s candidacy four years ago inspired many people, including young voters. But this time around, President Obama has a record to run on, and even the president himself stated at the beginning of his presidency that this record would be carefully scrutinized by voters. “One nice thing about the situation I find myself in is that I will be held accountable. You know, I’ve got four years. If I don’t have this done in three years, then there’s going to be a one-term proposition,” President Obama said.

The results of the last four years have made it clear that it is time to hold President Obama to his own standard. 

2012

BARACKOBAMA.COM



RE-ELECT BARACK OBAMA

by Harrison Covall

Governor Mitt Romney will be the first to tell you that his economic policy, and in fact, all of his policies, are vastly different than those of former President George W. Bush. However, these pronouncements are usually devoid of any policy specifics, save for lip service regarding the “closing of loopholes,” “reductions in government spending” and “strengthening America.”

Admittedly, a lack of specificity in policy proposals does not disqualify one from becoming president, and in fact, constitute one of the inherent advantages of being the challenger—namely, the ability of a candidate to run on vague promises against an incumbent who is bound by the record of both the successes and drawbacks that stem from policy implementation. However, if the bedrock of your domestic agenda parallels that of the Bush administration, policies that predicated one of the most disastrous decades in American history, greater transparency would certainly be politically advantageous. Moreover, if your opponent, President Barack Obama, has helped rescue the American economy from ruin and has stewarded it along the winding road to regained prominence, a lack of specificity becomes a glaring weakness that must be examined.

In 2000, George W. Bush ran on a promise to increase “economic freedom” through tax cuts and rolling back regulations, and upon entering the White House, he implemented both policies, signing two massive tax cuts and deregulating the financial industry. Neither policy proved effective, as the \$2.2 trillion budget surplus inherited by the Bush Administration evaporated and the financial industry took increasingly egregious risks that eventually pulled the carpet out from under the American economy. By the end of President Bush’s second term,

he had amassed the worst economic record since Herbert Hoover, overseeing record highs in unemployment and reductions in jobs, stunted economic growth, and severe drops in median household income, new firm creation, and participation in the work force.

Although few and far between, the policy specifics that can be distilled from the Romney plan indicate that, beyond simply embracing the Bush economic agenda, he intends to go even further.

First, Gov. Romney would double down on tax cuts. Whereas the Bush tax cuts reduced the amount paid by the top 1 percent by 7.3 percent, the House Republican budget, authored by Vice Presidential nominee Paul Ryan and embraced by Governor Romney, reduces taxes on the top 1 percent by 11.7 percent. Don’t worry, those cuts will be paid for by closing “loopholes” and “reducing government spending.” They will certainly be funded by cuts, many of which involving the removal of popular tax benefits, with 62 percent of the cuts effecting low-income individuals. These cuts would also lead to a \$2,000 tax increase for families with children making less than \$200,000.

But surely we won’t spend as much money on the military now that we are out of Iraq and almost out of Afghanistan? Not quite. Governor Romney’s defense plan increases military spending by \$2.1 trillion more than the amount requested by the Pentagon.


What about those pesky regulations put in place to prevent banks and financial institutions from driving up their profits while simultaneously holding the American economy hostage? House Republicans not only voted to repeal every aspect of Dodd-Frank, the most comprehensive banking reform ever passed, but they also want to repeal provisions meant to “wind down” failing banks in order to prevent the catastrophes seen a few years ago.

I should clarify something: I strongly believe that Americans should vote for a presidential candidate and

not simply against the opposing candidate. That being the case, pointing to the fact that Gov. Romney's stated agenda is based upon the underlying ideals of the Bush administration is not, in of itself, a reason to vote for Barack Obama. However, examining President Obama's track record, which occurred in a dire economic environment, not only lends support to a vote for the President, but also suggests that if allowed to continue, the policies of his administration will put America and its economy on a path of sustained growth and development.

When the President came into office, the economy was hemorrhaging jobs (losing nearly two million jobs in the last four months of 2008) and the GDP had shrunk by 8.9 percent, according to the Bureau of Labor Statistics. However, as the Recovery Act began to be fully implemented in 2010, job losses stopped and millions of jobs were saved or created. Additionally, in order to lessen the country's economic woes, President Obama signed into law a tax credit that cut taxes for 94.3 percent of Americans. Although congressional Republicans continue to refuse to vote on the American Jobs Act, which would lower taxes for workers and small businesses, give aid to state and local governments, expand unemployment benefits and help rebuild the American infrastructure, the private sector has created over five million jobs in the last thirty-one months, and there have been increases in manufacturing not seen since the mid-1990s. And on top of all this, the stock market has risen nearly 70 percent since January 20, 2009—the fifth best all-time growth in the stock market among presidents (trailing only FDR, Clinton, Coolidge and Eisenhower).

Gov. Romney is entitled to develop his policies in any manner he sees fit, but ask yourself: is a plan based on economic policies that turned a record surplus into a record deficit really the right direction for a country that is still attempting to drag itself out of an enormous economic hole? On the other hand, should we continue on a path to economic success, paved by policies that have already paid dividends and reinforced with new policies, such as the American Jobs Act that will allow for sustained growth?

The contrast is stark, but the choice is clear. A second Obama term will let the current policies continue to heal the economy and will allow for a strong foundation upon which future successes will be built. 

POLARIZED POLITICS IN THE INTERNET AGE

by Griffin Foster

This election cycle, a common media narrative describes American politics as more polarized than ever. Although past debates over slavery and independence were more contentious than those we have today, the current polarization is much broader than ever before. On nearly every issue, the two parties hold diametrically opposed views on the role of government (notable exceptions include U.S. policy toward Israel and support for veterans). Popular explanations for this polarization include increased gerrymandering and the fragmentation of cable news, but this isn't the primary cause. The Internet has revolutionized the way Americans get information and interact with their elected officials—resulting in a more engaged populace and a more polarized government.

First, the proliferation of internet news sites has enabled anyone to find a media outlet that fits his or her interests and viewpoints. Most people seek out sites that align with their existing beliefs rather than those presenting a wide variety of viewpoints. This creates a “feedback loop.” As people read articles that reinforce their own beliefs and biases, they become less interested in finding opposing opinions and data. As a result we know more “facts” than ever before, but the facts we know don't paint a complete picture.

Ironically, the technology that was supposed to broaden our horizons often creates insular communities of like-minded people. Instead of interacting with those in close-proximity, like coworkers or neighbors with divergent viewpoints, we join nationwide networks of people with similar beliefs and never discuss politics with anyone with whom we might disagree.

Second, the Internet has made everything instant and instantly shareable. Social media allows elected representatives to hear from their constituents within seconds. Details about political negotiations that used to be confined to the political elite now flood thousands of email inboxes every day. Elected officials shy away

from controversial statements or viewpoints, paralyzed by the fear that well-funded interest groups can ignite a political firestorm within hours. In many ways, our system works best when both sides have the political space to negotiate in private.

The combination of these two factors has helped create a Congress where two parties, largely unified on opposite sides of an issue, attempt to develop a sufficiently large majority to ram through an entire political agenda. This political tug-of-war has created the gridlock that prevents the vast majority of legislation from ever leaving the drawing board.

If Americans are to get the bipartisan government we want, we need to become more educated and sophisticated in wading through the constant stream of

information and interaction with our representatives. As citizens, it is our responsibility to truly understand both sides of an issue before we make demands of our representatives. For their part, elected officials have a responsibility to speak clearly about the challenging issues we face and the true cost of addressing them. Even more importantly, elected officials must be willing to negotiate and compromise in good faith, rather than holding out for an ideal proposal.

The virtues of the Internet age are well known, but its negative impact on political polarization is only beginning to be understood. My hope is that Americans will work to understand these changes better, so we can move toward the functional political system that we both want and deserve. **NB**

THE ELECTION AND THE NATIONAL DEBT

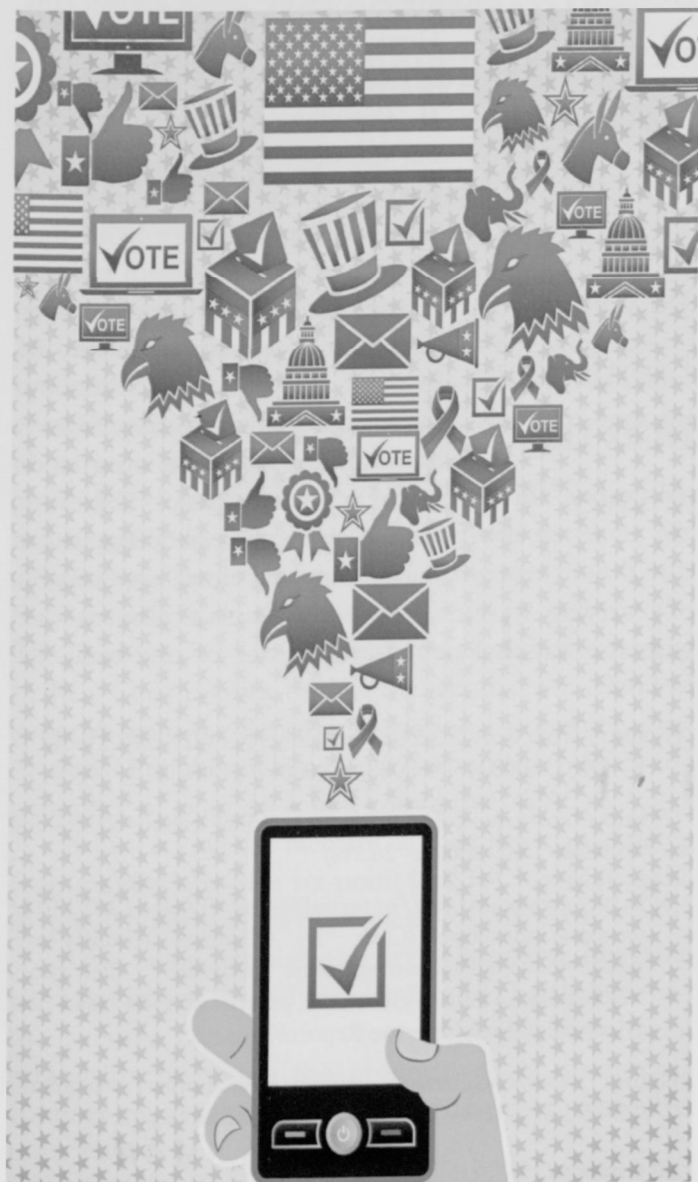
by A.J. Huber

It seems like in every election, at least one candidate has a grand plan for reducing the national debt. Despite these plans, of the last five presidents, only President Clinton actually reduced the debt as a percentage of gross domestic product (GDP). This presidential election, both candidates have stated that they would reduce our debt. In my view, President Obama's plan will help us to reduce our deficit without jeopardizing the economic recovery.

In order to intelligently discuss the national debt, we must first understand how we got here, how we compare with other countries, and what each candidate plans to do.

Why has our national debt increased in recent years?

When President Obama took office in late January 2009, the nation was in the midst of what we now refer to as the Great Recession. To stabilize the economy, the government has two tools at its disposal: monetary policy and fiscal policy. The government can use monetary policy to combat a recession by lowering



interest rates to encourage businesses to take out loans and expand. In response to the recession, President Bush's administration wisely lowered the interest rates to 0.25%; however, this did not leave much wiggle room for President Obama to use monetary policy to improve the economy. This left fiscal policy as the only remaining tool to improve the economy.

The government can try to counteract a recession through fiscal policy with deficit spending. When the government spends more than it takes in, demand for goods and services in the economy increases. This Keynesian logic was behind the New Deal, which helped bring the Great Depression to an end, and was behind the \$787 billion stimulus package that was passed a month after President Obama took office, which alone increased our national debt by about 5% of the 2011 GDP.¹ To put this amount of spending into perspective, a Brown University study estimates that the wars in Iraq and Afghanistan have cost \$3.2 to \$4 trillion so far, which has increased our national debt by 21-26% of the 2011 U.S. GDP.²

In response to the stimulus package and other government spending, real GDP growth, which was negative when President Obama took office, has been positive for about the past 3 years. Unemployment rates are a lagging indicator, which means that they change after the economy as a whole does. As such, unemployment rates increased as GDP growth began to improve, but they have decreased since reaching their highs in October 2009. Both GDP growth and unemployment rates indicate that the economy is slowly recovering.

How our debt stacks up

In 2011, the IMF estimated that the United States' public debt was 102.9% of its GDP, that Greece's public debt was 163.3% of its GDP, and that Japan's public debt was 229.8% of its GDP.³ On the other hand, Germany was at 81.5%, the United Kingdom at 82.5%, and China at 25.8%. The Congressional

Budget Office has projected two scenarios for the U.S. deficit over the next 25 years. In its extended baseline scenario, which allows current laws such as the Bush tax cuts to expire, the federal debt will slowly decline. In its extended alternative fiscal scenario, which extends most tax cuts and prevents automatic spending reductions, the federal debt will increase to 200% of GDP by 2037.⁴

What each candidate plans to do

Governor Romney plans to cut government spending by \$500 billion per year. President Obama plans to reduce the deficit by \$4 trillion over the next ten years (\$400 billion/year). Unsurprisingly, Governor Romney hopes to make larger budget cuts. However, large budget cuts are likely to be hard on the economy. If President Obama's plan will cut the deficit by 26.5% over the next ten years without even taking into account GDP growth,⁵ then why go any faster? Both political parties agree that we need to keep the debt from spiraling out of control, but in a time when our nation is still recovering from a recession, it would be wiser to do so at a slower pace. Therefore, assuming both politicians mean what they say and are capable of carrying it out, President Obama's plan to deal with the national debt is the better of the two. NB

“Assuming both politicians mean what they say and are capable of carrying it out, President Obama's plan to deal with the national debt is the better of the two.”

[1] <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (787,000,000,000/15,094,000,000,000=5.214%).

[2] <http://costsofwar.org/> (3.2 trillion/15.09 trillion=21.2% and 4 trillion/15.09 trillion=26.5%)

[3] <http://www.imf.org/external/pubs/ft/weo/2012/01/weodata/index.aspx> (Click “By Countries (country-level data),” then “All Countries,” then “Continue.” Then check “General government gross debt, percent of GDP” and click “Continue,” then “Prepare Report.”)

[4] http://www.cbo.gov/sites/default/files/cbofiles/attachments/06-05-Long-Term_Budget_Outlook_2.pdf, page 3.

[5] 4 trillion/15.094 trillion=26.5%

Authority



MISSOURI SENATE CANDIDATE KEEPING RACE COMPETITIVE DESPITE CONTROVERSIAL COMMENTS

by Paul Kanellopoulos

It was almost inconceivable that Senator Claire McCaskill (D) would be successful in her bout to seek re-election against Todd Akin (R). Then, Mr. Akin's controversial comments about rape made the opposite conclusion seem much more likely.

Now, after resisting calls from outside and within the Republican Party to withdraw from the race, Mr. Akin's experienced resurgence over the past month puts the outcome in much more doubt.

The Missouri Senate race is now considered a tossup by Real Clear Politics, despite the fact that Mr. Akin lost support from the Republican National Committee, the National Republican Senatorial Committee (NRSC) and a number of political action committees (PAC).

Polls tracking the race are all over the map, ranging from predictions of a six-point lead for Ms. McCaskill, to a half point lead, to even a lead for Mr. Akin.

After being left high and dry by his party, Mr. Akin has highlighted his bid for election as a battle between the average conservative voter and the Republican establishment, citing the groundswell of grassroots support he received in the face of scorn from the party elite.

Since his comments, Mr. Akin has repeatedly apologized for his remarks and raised more than \$600,000 through his online effort to rebrand his campaign.

Former Speaker of the House Newt Gingrich (R-GA) and former Senator Rick Santorum (R-PA) have expressed their support for Mr. Akin in the wake of the public backlash against him. Senator Jim DeMint's (R-SC) pro-Tea Party group and the Senate Conservatives Fund have also backed Mr. Akin, contributing almost \$300,000. Senator Rand Paul (R-KY) has recently done the same.

The beleaguered congressman has also received support from within his state, obtaining 81 percent of his funding from Missouri residents.

Despite these contributions, Ms. McCaskill's campaign still maintains a sizable funding advantage. According to data compiled by Kantar Media/AMG, her campaign has raised \$5.8 million since July 1 and spent seven times more on advertisements than Mr. Akin.

However, with Mr. Akin's name locked in to the ballot, many in his circle believe that he will soon regain the support of the Republican elite who initially supported his ouster. A number of current and former senators are coming back to Mr. Akin's corner after first recommending he drop out of the race. With a Republican majority in the Senate at stake, many within the party believe it is too risky not to back him now that the race is competitive again.

On the other hand, high-profile Republicans ranging from presidential nominee Mitt Romney to Gov. Chris Christie (R-NJ) still have not gotten behind Akin. The NRSC and Karl Rove's PAC, American Crossroads, are still saying they don't plan on re-entering the race. Although Mr. Akin will not regain much of the financial support he has lost, he has been kept afloat by a strong effort from his base of anti-abortion activists and Christian conservatives. According to exit polls, 38 percent of the state's 2.9 million voters identified as evangelical Christians in 2008.

Ms. McCaskill has vulnerabilities of her own, which have contributed to Mr. Akin's recent bounce. She has been hit hard by Missourians' perception of her allegiance to the national Democratic Party. Despite only narrowly supporting Senator John McCain in 2008, the state has taken a strong conservative turn over the past four years.

According to Public Policy Polling, 50 percent of likely voters in Missouri would prefer Republican control of the Senate. The 14 percent of Missouri's undecided voters are overwhelmingly conservative, favoring a Republican controlled senate 65-14. The Presidential race is not particularly competitive in the state either, with Mr. Romney leading President Obama 51-45 percent.

Although Ms. McCaskill has tried to position herself as a moderate, she was a vocal supporter of the president during his election bid and supported policies disdained by the state's population. In particular, Ms. McCaskill's support for Obamacare" and her "F" rating from the National Rifle Association have been attacked by the political right within the state. However, Ms. McCaskill is leading Mr. Akin by as much as 18 percent among women voters, and the remaining weeks of the campaign will be dependent upon Mr. Akin's ability to deal with the gender gap and assuage concerns about his comments. This seems unlikely to occur, however, as Mr. Akin has continued making controversial remarks, including calling Ms. McCaskill "a dog" and stating that she is not "ladylike" enough for Missouri.

While Mr. Akin's accusations of Ms. McCaskill not being as "ladylike" as she had been in her 2006 campaign have drawn additional criticism, he has dismissed these apparent weaknesses as matters of "optics" and remains confident about his chances moving forward. He argues that the gender gap is the same as it would have been regardless of the comments.

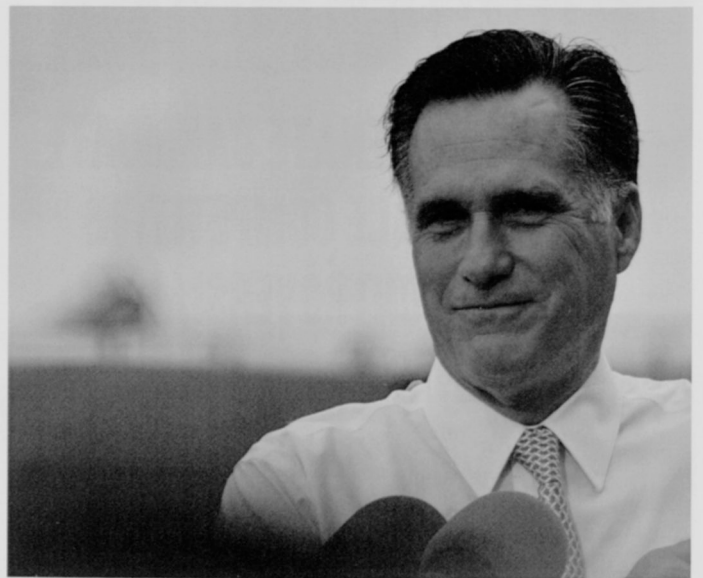
Mr. Akin has been trying to rebuild his image with women by inviting Janet Huckabee, the former First Lady of Arkansas and wife of 2008 presidential candidate Mike Huckabee, to campaign for him. They will try to convince women that Mr. Akin will support their interests in Congress despite his controversial comments.

Mr. Akin believes that his campaign against the incumbent can secure victory. By focusing on Ms. McCaskill and her record, the campaign believes it can overcome much of the ground they lost after his initial incendiary remarks. Rick Tyler, a spokesperson for the Akin campaign, told BuzzFeed Magazine that female voters in Missouri "understand that [Akin] misspeaking and apologizing for it does not trump" unpopular elements of McCaskill's voting record. Tyler cited the Affordable Care Act (Obamacare) and the stimulus as

the specific objects of criticism.

With the election only weeks away, voters and political annalists around the country will soon find out if they are right. NB

Image Attribution: The source image for this illustration of a candidate poster is from the Library of Congress. The source image for this caricature of Senator McCaskill is a photo in the public domain available via Wikimedia. The source image for this caricature of Congressman Todd Akin is a Creative Commons licensed photo from the MoBikeFed's Flickr photostream.



Governor Romney rallies in Norfolk, VA.

VIRGINIA: A BATTLE FOR THE SENATE IN THE NEWEST SWING STATE

by Paul Kannellopoulos

Virginia Senator Jim Webb's (D) decision not to seek re-election has put many GW Law students in the middle of one of the most important races this electoral season. With thirty-three of the 100 seats in the Senate hanging in the balance this November, the winner could determine which party gets the critical fifty-first vote needed for a majority.

Former Virginia Governors Tim Kaine (D) and George Allen (R, also a former senator) are going head to head in the race, and according to the Campaign

Finance Institute, they have spent more money than any other senatorial campaign. Mr. Webb defeated Mr. Allen for the seat in 2006.

Both candidates have spent time in the DC area as they double down heading into the final leg of campaign season. The candidates held competing events, attempting to energize their supporters in the region: Kaine appeared with the National Organization for Women and the Feminist Majority Foundation in Dulles while Allen met with defense contractors in Arlington.

The hotly contested race has been a spotlight for many issues on the national stage, with Mr. Kaine and Mr. Allen offering stark contrasts in several major policy areas.

Although both candidates agree with the need for a balanced budget and reduced federal spending, they are divided on how to achieve it. Mr. Allen supports measures like a flat tax rate and a balanced-budget amendment and resists further measures to increase the tax rate of high-income earners. Mr. Kaine, on the other hand, advocates a combination of spending cuts and tax increases for individuals earning more than \$500,000 a year, coupled with investments in education and energy infrastructure.

Mr. Kaine believes that it's impossible to eliminate the deficit without the increased revenue from additional taxes, while Mr. Allen favors limiting government intervention in the private sector to stimulate job creation. With Virginia being home to a large array of military bases and defense contractors, cutting the military budget has

become their central point of divergence on fiscal policy. Mr. Allen has attacked Mr. Kaine for his support of last year's debt ceiling deal, which could require automatic cuts in the defense budget at the end of the year and advocates for increased military spending. Mr. Kaine, on the other hand, would push for targeted cuts in military expenditures to further balance the budget.

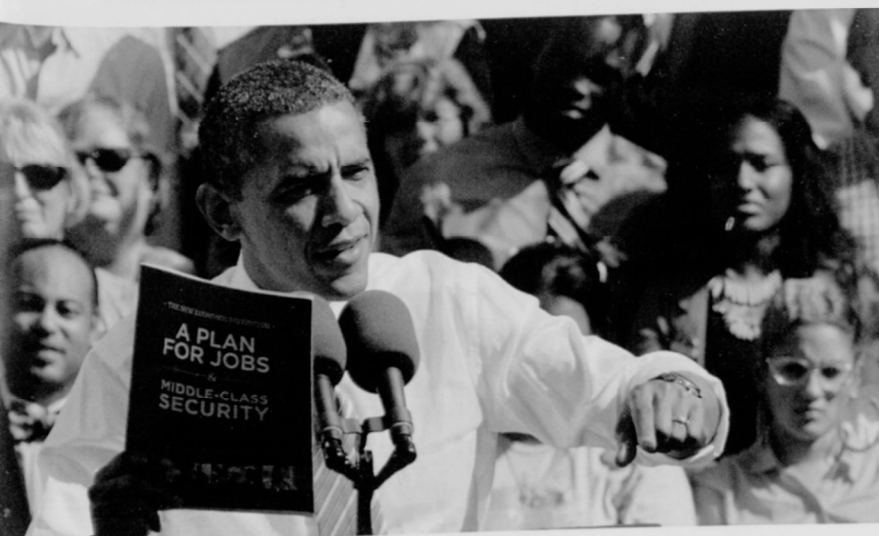
Beyond fiscal issues, the two candidates offer diverging perspectives on reproductive rights. These differences reflect the controversies that have brought Virginia into the national spotlight over the past year after one bill was introduced in the state legislature that would require women to undergo ultrasounds before abortions and a "personhood" measure was introduced that would proclaim that life begins at conception.

While Mr. Allen has pushed hard on the sequestration issue, Mr. Kaine has fired back on the issue of reproductive rights. Mr. Kaine has accused Mr. Allen of downplaying issues of reproductive rights, while firmly indicating his continuous support for abortion rights.

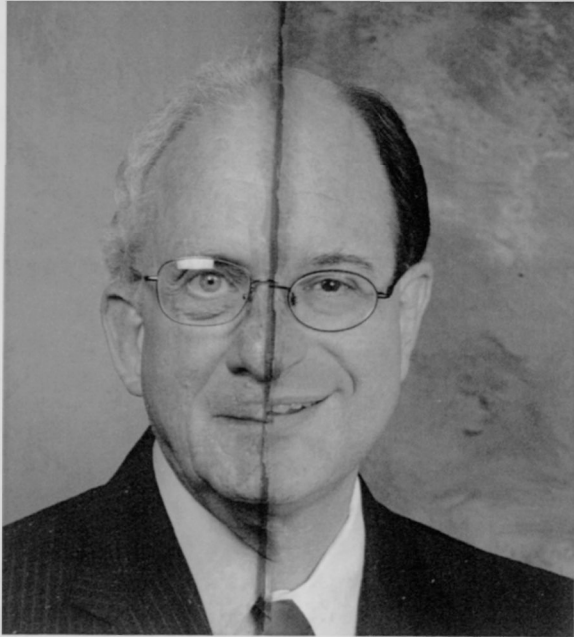
The candidate's divergent platforms reflect the changing demographics in Virginia, which could play a substantial role in determining the outcome of the race. The candidates' personal lives have also played a role. As a former Chairman of the Democratic National Committee, Mr. Kaine has been criticized by Mr. Allen as a stooge of President Barack Obama's, an argument that plays better the worse President Obama does in Virginia. Mr. Allen, on the other hand, made controversial comments during his 2006 Senate reelection campaign when he stated that an Indian supporter of Mr. Webb's was a "macacca" – a pejorative term used by French colonialist in Africa to refer to darker skinned people. These remarks have come back to haunt Mr. Allen this year in his bid to regain his old Senate seat.

Although Mr. Allen strongly contends that women's primary concern is the economy and job growth, he is facing a 14-point deficit amongst women voters in the polls. His ability to successfully obtain the Senate bid will rely on winning enough crossover voters to overcome the gender gap.

Polls of the race currently favor Mr. Kaine, however, the increasingly close race is sure to come down to the wire. **NB**



President Obama rallies in Norfolk, VA. Presidential campaigning is expected to markedly effect Virginia's senate race.



BERMAN AND SHERMAN: THE DEMOCRATS WHO NEED REPUBLICANS

by *Lucas Botello*

Voters in California's newly drawn 30th congressional district (CA-30) will have to choose between two incumbent California Democrats whose profiles are as similar as their names. Candidates Howard Berman and Brad Sherman have represented parts of the district; both are Jewish; both sit on the House Foreign Affairs Committee; and both have similar voting records.

This odd situation is the product of two state propositions passed by California voters in 2010 in order to produce more moderate candidates. One of these propositions, Proposition 20, removed the responsibility of drawing boundary lines of the Congressional districts from state legislatures and the governor and gave that responsibility to an independent citizens' commission. As intended, the newly drawn districts consist of populations that have more of a mix of Republican, Democratic, and Independent voters,

leaving fewer "safe" seats for incumbents, which should produce more moderate candidates.

This system produced a new majority Latino district (CA-29) which includes parts of both Mr. Sherman's and Mr. Berman's districts. Both their residences are now in the same district, CA-30. Mr. Sherman has the geographic advantage as more than half of his old district is in the new one, while only 20 percent of Mr. Berman's old district is. Mr. Berman could have decided to run in CA-29, but with 69 percent of that district's population being Latino, Mr. Berman considered he had a slim chance of beating former Los Angeles City Council member Tony Cardenas for the spot. So, both incumbents see CA-30 as their best chance of staying in Congress.

In the June primary, Mr. Sherman received 42.4 percent of the vote, while Mr. Berman received 34.5 percent. Were it not for the recent change in the primary system, this contest between the two Democratic incumbents would have ended in the primary in June with Mr. Sherman proceeding to the general election against the top vote-getter in each of the other parties. Traditionally, primaries were designed so that voters registered within each party could decide among themselves who would be the best candidate to proceed to the general election and represent their respective party to the rest of the electorate. This process creates an incentive for candidates to run towards their base, meaning that Democrats try to appeal to their more liberal wing and Republicans attempt to win over their more conservative wing of their respective parties. Then, after the primary, the candidates have to make what can be an awkward return to the center in order to appeal to the general election. This is what Mitt Romney's campaign advisor was referring to when he said that their campaign could "hit the reset button" after the primary and that campaign was like an etch-a-sketch. Voters in the general election voters are sometimes left with a choice between two candidates who have taken more ideologically extreme positions than most independent and moderate voters would like.

In an attempt to change the incentives, California voters in 2010 approved Proposition 14 that created an open primary system in which candidates running for Congress, the state legislature, or other statewide offices must compete in a non-partisan open system.

Under this new primary system, voters choose any candidate regardless of their political affiliation and the top two vote-getters proceed to the general election regardless of their party. This system is designed so that moderate candidates from both parties will have a better chance of being elected and candidates generally have an incentive to appeal to a wider portion of the electorate. Washington State implemented this system in 2008 to achieve these same goals. (For more on redistricting, see *Vagaries*, pg. 26.)

In the case of CA-30, Mr. Sherman and Mr. Berman are moving more towards the center to compete over the roughly one quarter of voters in the district who are Republican. Mr. Berman is touting his endorsements from prominent Republican like Senators John McCain (R-AZ) and Lindsay Graham (R-SC). Republican Congressman of California Buck McKeon said “Republicans in Congress know that Howard Berman is one of the few Democrats we can partner with to advance bipartisan, commonsense legislation to deliver meaningful results for all our constituents.” Meanwhile, Mr. Sherman is advertising local Republicans like Los Angeles City Councilman Mitchell Englander and former Los Angeles City Councilman Greg Smith.

Additionally, both Mr. Sherman and Mr. Berman are fighting for the 25 percent of voters in CD-30 who are either registered with another party or unaffiliated with any party. Both candidates are displaying their endorsements from independent candidates. Mr. Berman announced his endorsement from Independent Senator Joseph Lieberman (I-CT), while Mr. Sherman publicized his endorsement from Independent Los Angeles City Councilman Dennis Zine. There is even growing pressure for Mr. Berman to endorse Independent candidate Bill Bloomfield over fellow Democrat Henry Waxman in the neighboring CA-33.

This kind of behavior is what California voters had hoped to induce, pushing members to move toward the center and become more bipartisan. This may be a model that other states will begin to adopt in an effort to combat the gridlock preventing Congress from passing laws. The current hyper-partisan gridlock is plaguing Congress, resulting in the lowest number of laws passed since 1947 and contributing to Congress’s all time low approval rating. While it is true that our electorate has become more polarized, our

underlying electoral system exacerbates this gridlock. Congressional Members are more ideologically extreme and less willing to compromise partly because the current primary election system in most states selects for candidates who take ideologically extreme positions.

The drawback of this system is that third party candidates are likely to be pushed out of the process even further. In the original primary system, other parties always had a candidate on the general election ballot representing them. Since California’s new primary system only allows for the top two candidates to proceed, only Democratic and Republican candidates are likely to make it to the general election. The Green Party, the Libertarian Party, the Constitution Party and all other political parties are likely to be excluded from the general election, when voter turnout is the highest. The concession that California’s electoral system makes to these political parties is that voters may vote in the primary for any candidate they prefer regardless of the candidates party. This puts minority parties on an equal footing as the Republican and Democratic candidates in the primary.

Critics of the new primary system argue that the number of additional moderate candidates produced is insignificant because only a handful of primaries in the state produce candidates from the same party. Only eight of the fifty-three California House races are between candidates from the same party. Critics argue that these eight races will be the only situation in which the more moderate Congressional candidate will be favored. The other forty-five will be running in races virtually unaffected by the new rules.

If more states follow the model now used by California and Washington, the nation could start seeing the election of more moderate members of Congress who are willing to compromise, but the system might also strengthen the two-party system that some voters have blamed for the partisan gridlock. Whatever the result of this new primary system, it will likely take many years, if not decades, before a significant number of states to adopt these changes and even more years before those changes have an opportunity to create a more drastic change in our national political system. In the mean time, candidates like Democrats Berman and Sherman must compete for Republican favor to ensure their political survival, the ultimate political rarity. NB

THE LID IS FLYING OFF THE POT IN COLORADO

By Patrick Fortune

While the nation is focused on which states turn blue and which go red, two states could be turning green. Voters in Washington and Colorado have initiatives on the ballot this year that mandate the legalization, regulation and taxation of marijuana. While the time may not be ripe for Washington, those Rocky residents of Colorado may just have what it takes to blow smoke at the rest of the nation.

Colorado is looking to overthrow California from its hazy throne as the U.S. leader in hemp and herbs. Amendment 64, on the ballot this year, would legalize the possession, consumption and cultivation of small amounts of marijuana for all residents 21 and older.

The task of regulation falls entirely upon local governments, and allows them to prohibit businesses from cultivating or dispensing the plant. While local communities will be allowed to limit production and sales, an individual's right to possess and consume marijuana may not be abridged under the amendment.

Marijuana's hard working cousin, industrial hemp is also specifically included in the legalization list. The ballot measure allows for large-scale cultivation, processing and testing facilities for both cannabis cousins.

After the pizza delivery industry, the state's schools are the biggest prospective winners. Amendment 64 requires the general assembly to enact an excise tax upon wholesale transactions and sends the first \$40mm in revenue to the Public School Capital Construction Assistance Fund.

Polls seem to show a lot of support for legalization; some polls indicate that this Amendment might actually pass. The most recent poll on August 8th of this year showed 47% supporting the initiative, with 38% against. A whopping 15% remain undecided; these voters will cast the deciding ballots.

In 2006, 59% of Colorado voters rejected Amendment 44, which also sought the legalization

of marijuana. While both amendments were very similar in content and form, the six-year gap may make all the difference. The last time legalization was put to a statewide ballot in Colorado, the state had yet to fully work out the kinks of medical marijuana and the economic situation was a lot better. Not until a lawsuit against the Health Department was won in 2007 did the Colorado medical marijuana industry really take off. Since then, Colorado has embraced the industry with dispensaries now all over the state, including over 400 in the Denver area alone.

Taxes on medical marijuana brought in over \$5mm in revenue for the state last year. The economic incentives may be the key to changing the minds of those undecided voters, especially in light of expected tax revenue from the amendment is about \$24mm.

Even if adopted, this initiative may still get stoned by the courts. The Amendment requires the state Assembly to legislate on the issue when in fact it is unconstitutional in Colorado to force a state assemblyman to vote on any particular issue. Of course there is also still the fact that this amendment would directly contradict federal drug laws and regulations.

Whether or not Colorado will go fully green in 2013 is still unclear. No matter how the voters decide this one, Amendment 64 and the success it has already enjoyed is a strong indication that the country cannot avoid marijuana reform for much longer. Smoke 'em if ya got 'em. **NB**



Photo by David Snyder for the National Park Services.

GWU BATTLEGROUND TRACKING POLL: OBAMA AT 49% AND ROMNEY AT 48%

Press Release

WASHINGTON—If the election were held today 49 percent of Americans would vote for President Obama and 48 percent would vote for Governor Romney, according to a new POLITICO-George Washington University Battleground Poll released today. This one-point lead is reversed when voters are asked to rate how likely they are to vote for each candidate. Then, 43 percent say they will “definitely” vote for Romney and 42 percent will “definitely” vote for Obama.

“The latest results of our national poll continue to show an extremely tight race,” said Christopher Arterton, founding dean of GW’s Graduate School of Political Management. “Over the next eight days attention will increasingly focus on voters in critical battleground states. These voters, who will ultimately decide the race, have been deluged with TV ads, inundated by mailed brochures, bombarded by telephone calls and interrupted by door knockers. I suspect that much of the nation doesn’t envy them.”

Early voting has begun and among those who already cast their vote, Obama leads 53 to 45 percent. These early voters represent 15 percent of the electorate.

“In a tight race, Obama has the edge with a majority of voters who like him, approve of the job he is doing and believe he will win,” said Celinda Lake, Democratic pollster and president of Lake Research Partners. “Obama also has the advantage in the early vote, and


women have come back to him. The key now is turnout.”

The president’s job approval rating is 50 percent approval and 49 percent disapproval. Both candidates have a favorable personal rating with the majority of voters. President Obama has a 51 to 46 percent favorable to unfavorable rating, and Governor Romney has a 52 to 43 percent favorable to unfavorable rating.

When voters are asked which candidate they think will better handle key issues, Mitt Romney leads on the economy (51 to 46 percent), jobs (51 to 46 percent), federal budget and spending (54 to 42 percent) and the ability to get things done (49 to 45 percent). Barack Obama leads on foreign policy (54 to 42 percent), Medicare (51 to 45 percent) and standing up for the middle class (54 to 41 percent). With a 3.1 percent margin of error, the candidates are statistically tied on taxes (49 percent for Obama and 47 percent for Romney), sharing your values (49 percent for Obama and 46 percent for Romney) and being a strong leader (49 percent for Obama and 46 percent for Romney).

“Romney has the advantage on the pocketbook issues and Obama has the advantage on more abstract issues,” said Ed Goeas, Republican Pollster and president/CEO of The Tarrance Group. “The final days of the campaign will most likely feature both candidates making a strong case about these individual strengths. The difference, as has been the case most of the fall campaign, will be that Romney will be focusing on issues that are the top concerns of most voters.”

With only eight days until Election Day the POLITICO-George Washington University Battleground Tracking Poll is a valuable tool in anticipating the outcome and gauging voter attitudes and concerns. Results from the next tracking poll will be announced Monday, Nov. 5.

For full results and analysis go to www.gwu.edu or www.politico.com. 

The
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LATINOS IN AMERICA: DECISIVE DEMOGRAPHIC OR PAPER TIGER?

by Michael Perez

It is late 1960. American families across the country sit in front of their television sets and witness a political aberration. A youthful Jackie Kennedy, robed in conservative dress, speaks to the nation in support of her husband, then Senator John F. Kennedy. With a calm demeanor and a soothing voice, Mrs. Kennedy utters a historic phrase that remains entrenched in the annals of our political history: "Voten ustedes por el partido Democratica el dia 8 de noviembre... Viva Kennedy". (Vote for the Democratic Party on November 8th). With those words, the Latino demographic was thrust into the national spotlight, acknowledged as an important voting demographic. Kennedy won the 1960 election by a narrow margin, and many historians claim that the Latino vote, in states like Texas, put him over the electoral threshold. Still, there are questions about how much Hispanics will impact American politics in the future. Is the Hispanic community a decisive demographic, or simply the 'paper tiger' of our electoral system?

According to the 2010 Census Bureau, Latinos are now the largest minority group in the United States. From 2000 to 2010, Latinos accounted for 56 percent of the nation's overall population growth. Consequently, there are now 51.9 million Hispanics living in the United States. In comparison, Whites' overall percentage of the population decreased during the previous decade, from 69 to 64 percent. Researchers at the Pew Hispanic Center predict that the number of Latinos will continue to rise, exacerbating current population disparities. Foundational evidence for these predictions is already being realized. The New York Times recently reported that for the first time in our nation's history, minorities combined account for more births in the U.S. than Whites.

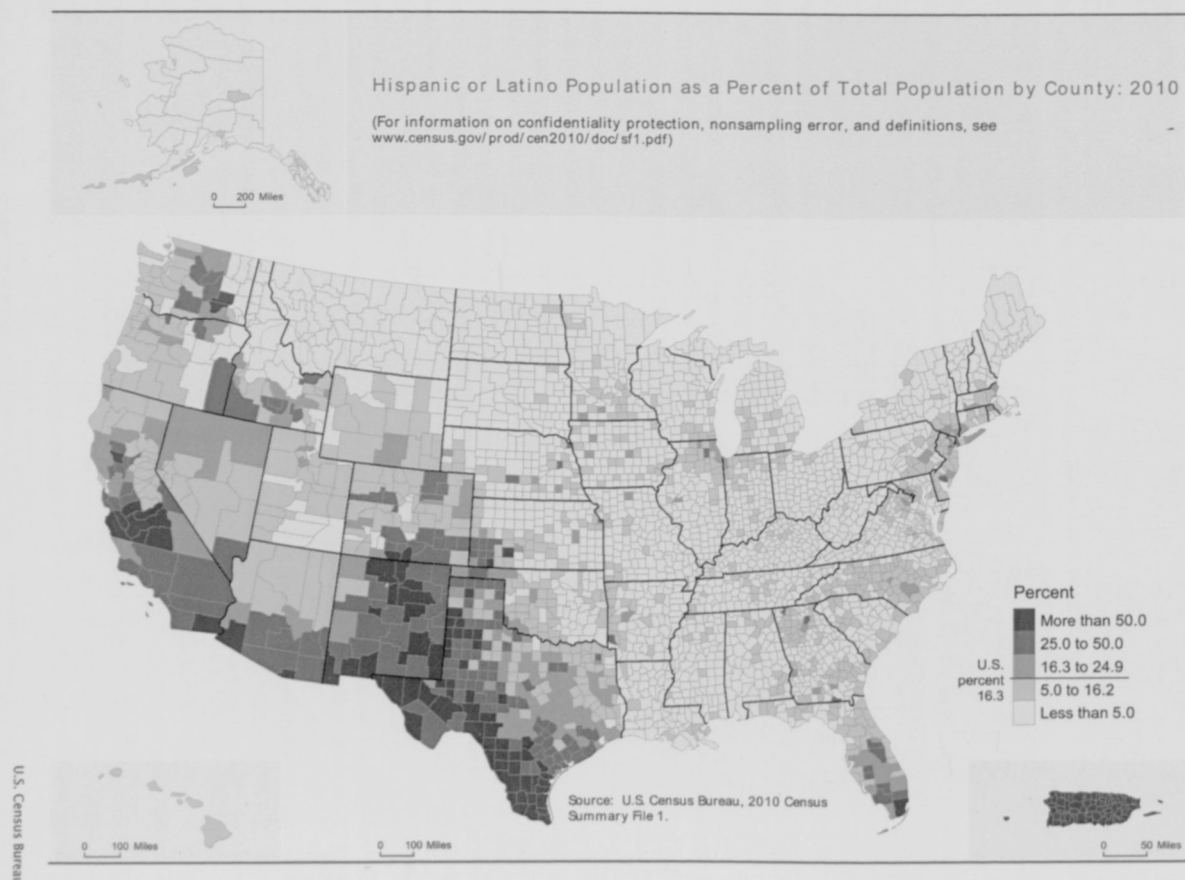
The expansion of the Hispanic community over the past 10 years is concentrated predominantly in

Texas, Florida, South Carolina, Arizona, California, New Jersey, New York, Colorado, New Mexico and Nevada. As a result, Texas, Florida, South Carolina and Arizona all gained additional representation in Congress, with Texas receiving four more congressional seats. These shifts will be vitally important in deciding which political party holds the majority in the House of Representatives.

Aside from the Hispanic community's effect on congressional distribution, large population increases in traditional swing states provide Latinos with an unprecedented amount of voting power. Maximizing this political capacity has been stymied primarily by sub-par voter registration and low voter turnout. Despite over 50 million Latinos residing in the United States, the Pew Hispanic Center finds that only 23.7 million of them are actually eligible to vote, making Latinos roughly 11 percent of the national electorate. In 2008, nearly 50 percent of eligible Latino voters casted their ballots in the presidential election, a percentage that lagged behind 65 percent of eligible Blacks and 66 percent of registered Whites. Still, despite the disparaging statistics

and entrenched pattern of nonparticipation, Hispanics that participate in the voting process have affected the outcome of several key elections.

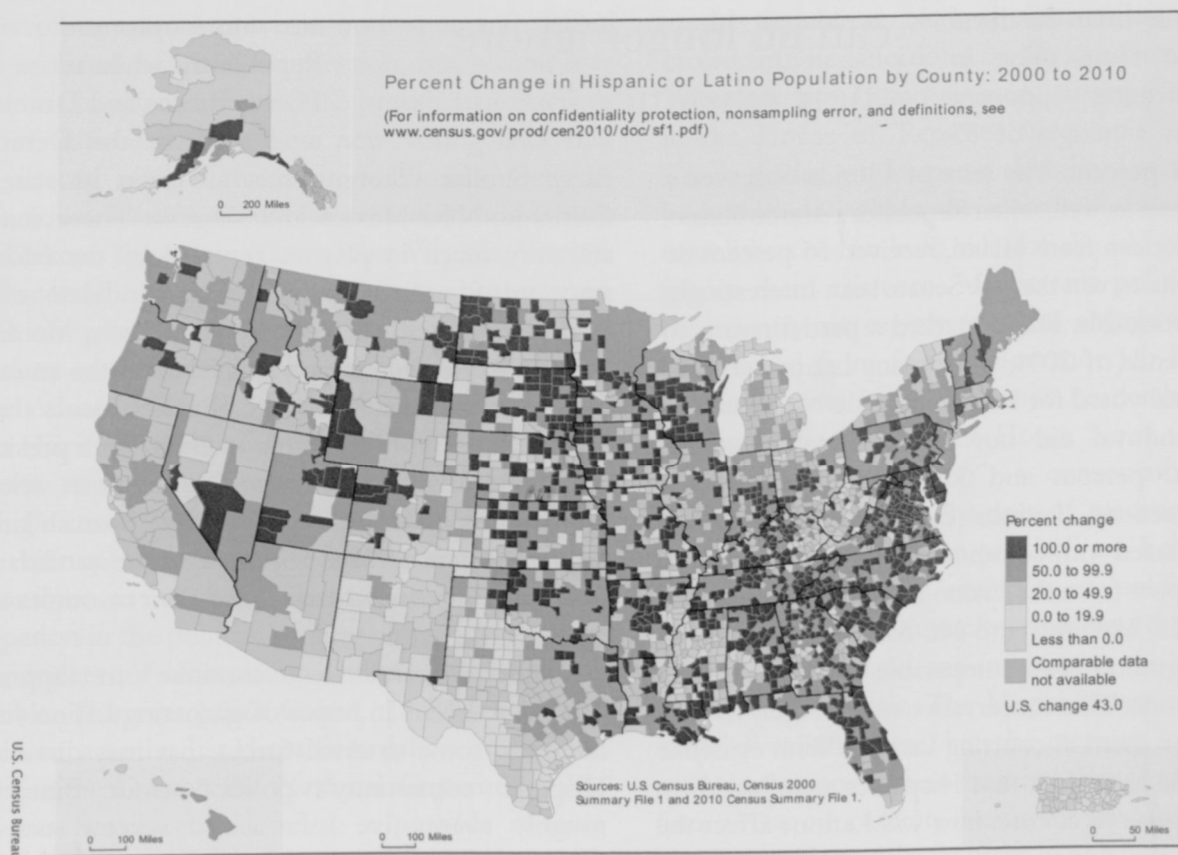
In 2004, more than 9 million Hispanics voted in the presidential contest between President George W. Bush and Democratic challenger Senator John Kerry (D-MA). Victories for Mr. Kerry in Colorado, Nevada and New Mexico would have propelled him to the presidency, but a slim gap of just 137,000 votes among those three states kept him from the White House. Latinos represented a substantial fraction of those votes, but 44 percent of Latinos nationwide backed Mr. Bush. It is the largest percentage of the Latino electorate that any Republican presidential candidate has ever attained. Political pundits blame this historic level of approval on Mr. Kerry's inability to connect with Latino voters. One telling statistic, noted in journalist Jorge Ramos' book "The Latino Wave", shows that Mr. Kerry gave only twenty-five Spanish language interviews during the campaign. In contrast, Mr. Bush's 2000 campaign saw the former President sit for roughly 100 interviews. Bush continued that



trend in 2004. These public appearances provided him with opportunities to advocate for policies such as comprehensive immigration reform, an issue that continues to be important to Latino voters. Though support for immigration reform never materialized into actual law, Mr. Bush did, however, appoint Latinos to prominent positions, such as Alberto Gonzales, who served as the first Hispanic United States Attorney General.

Barack Obama's historic 2008 election also serves as an illustration of the Hispanic community's influence. Mr. Obama received 68% of the Latino vote, while Senator John McCain (R-AZ) received a mere 28 percent. Latinos played a significant role in three states that switched parties after backing Mr. Bush in 2004. According to CNN polling data, the margin of victory for Barack Obama in New Mexico was approximately 120,000 votes. Hispanic support in that state provided the President with 186,000 votes. In Nevada, where roughly 89,000 Latinos cast their vote for Mr. Obama, his margin of victory was 119,896 votes. One of the closest races in 2008 took place in Indiana, a state that

had not selected a Democratic presidential candidate since 1964. That state was decided by a mere 26,000 votes. 77 percent of Latinos voted for Mr. Obama in Indiana, a percentage that translated into 76,000 votes. Similar to Mr. Bush, Mr. Obama's favor within the Latino community was tied to his advocacy for immigration reform. Throughout the campaign, he pledged to put forth a comprehensive immigration bill during his first year in office. This unprecedented guarantee struck a chord with many Hispanic voters. The president has still not put forth an immigration bill, but Latinos can point to decisions by the administration that demonstrates the presence of Hispanic political influence. In 2009, Sonia Sotomayor, a Latina of Puerto Rican descent, was appointed to the United States Supreme Court, the first ever person of Hispanic descent to be appointed to the high court. Secondly, and far more recent, Mr. Obama issued an executive order, temporarily suspending the deportation of undocumented immigrants who would otherwise be granted a pathway to citizenship under the DREAM Act. This directive will affect roughly 1.4 million immigrants, many of which live in key



battleground states. The reprieve is temporary, but it exemplifies how an overwhelming amount of Latino voters can affect presidential policy.

In 2010, Latinos used their political influence to impact both Congressional and state elections. In Nevada, Senator Harry Reid won by only five percentage points over Republican challenger Sharron Angle. Going into election night, Mr. Reid, a George Washington Law School alumnus, was trailing in the polls. Nevertheless, Mr. Reid was able to overcome the election night deficit, largely in part to his ability to mobilize 69 percent of the Latino vote. Reid's high approval with Latinos was attributed to his support for the DREAM Act, a bill that 89 percent of Hispanic Nevadans favor.

In addition to Senator Reid's close victory, Latino voters in 2010 were able to help elect three Hispanics to prominent political offices. In New Mexico, Republican Susana Martinez became the first Latina Governor elected in the state, while Brian Sandoval achieved the same thing in Nevada, defeating opponent Rory Reid by a margin of 53 percent to 41 percent. The state of Florida observed a historic election as well, when Republican Marco Rubio, a Cuban American from Miami, received 55 percent of the Latino vote to win the U.S. Senate seat. Interestingly, only the election Mr. Rubio marked a partial return to the voting trends of 2004, when many Latinos crossed party lines and voted for President Bush. Ms. Martinez and Mr. Sandoval did not fair well with Latinos, garnering 40 percent and 33 percent, respectively. In those elections, Latinos did not blindly follow candidates based on common cultural background. Instead, support from the Latino community was based on policy. Ms. Martinez and Mr. Sandoval both favor tough immigration laws comparable to the measures taken in Arizona. This conservative stance surely did not help either of them in courting Latinos. With evidence bolstering the argument that Hispanics vote based on policy as oppose to culture, how will Latinos affect the 2012 presidential campaign?

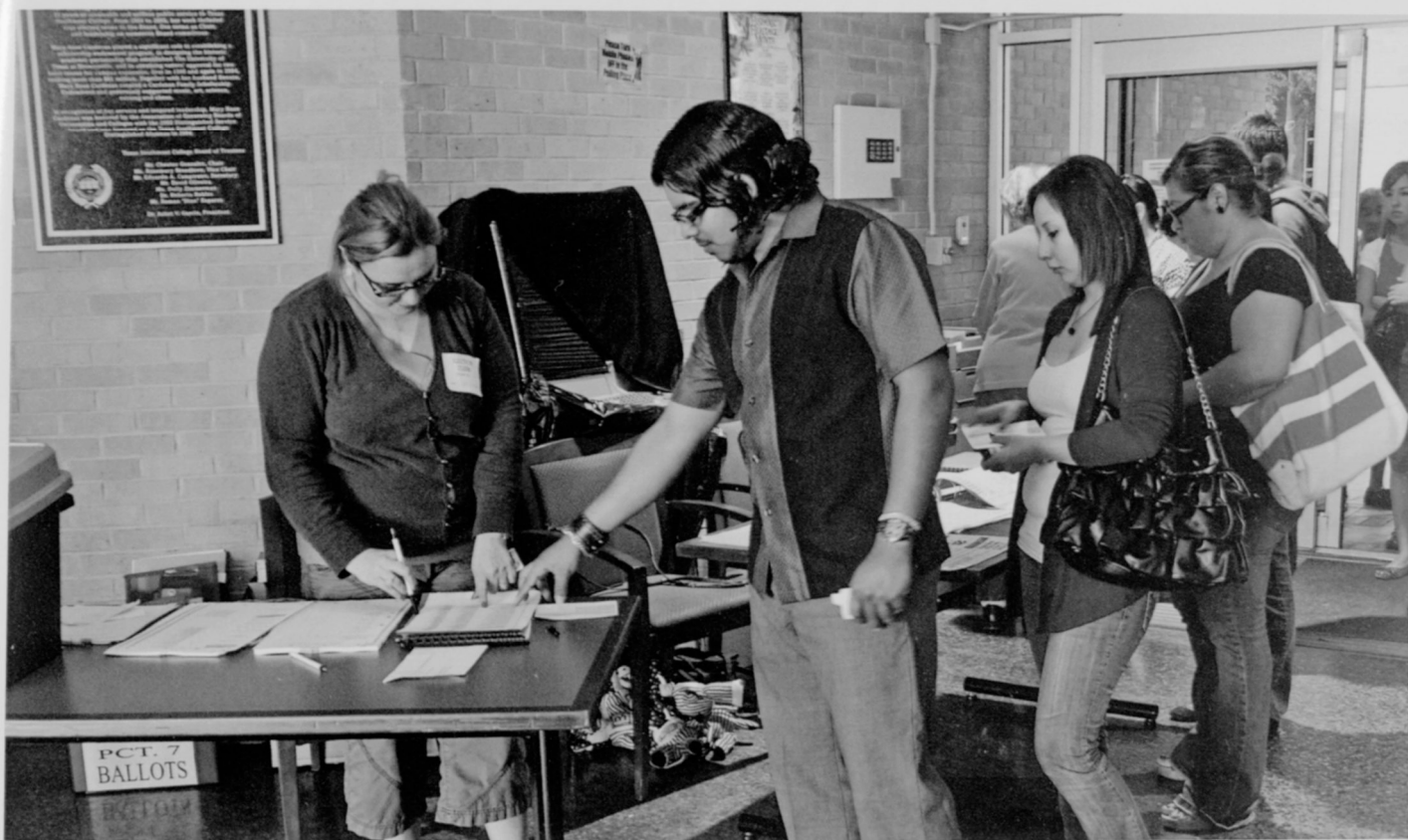
“Latinos may still be a minority within the electorate, but the political establishments on both sides of the isle can no longer ignore their existence.”

The Pew Hispanic Center recently reported that Latino voters prefer Mr. Obama to former Massachusetts Governor Mitt Romney by a margin of 69 percent to 21 percent. Hispanics in swing states are bombarded with phone calls, television ads and emails, soliciting monetary donations and assistance with voter registration. In Florida, a key swing state offering 29 electoral votes, the amount of registered Latinos has increased from 10.7 percent of the electorate in 2006, to 13.5 percent in 2012. Obama carried Florida in 2008 by about 204,000 votes, but both Republicans and Democrats have observed sharp rises in voter registration over the past few months. As a microcosm of the

nation, Hispanics in Florida are not monolithic, and may differ in their political affiliations. Often times, opposing beliefs, which are a consequence of cultural variances, result in different views on the economy, women's rights, gay marriage and immigration. In Florida, conservative Cuban Americans are more prone to voting Republican, while more liberal Puerto Ricans and Dominicans tend to favor the Democratic

Party. Similar voting trends are seen in states like Colorado, New Mexico and Virginia. These states are still very much in play, as revealed by the enormous amount of political capital each candidate expends in those parts of the country. Nationally, Mr. Obama and Mr. Romney have spent eight times the amount of money on Spanish Language advertisements than did Mr. McCain and Mr. Obama in 2008. Both presidential candidates have also made primetime television appearances on Univision, a premiere Spanish language channel. These efforts demonstrate the candidates are focusing a substantial amount of their resources toward courting the Latino vote.

Though candidates continue to appropriate campaign dollars in hopes of garnering Latino support, there are some external forces that may diminish the Hispanic community's political clout. Since 2011, roughly twenty-five laws across several states have substantially modified voter eligibility. Some of these



Citizens waited in line to vote at the voting station in Mary Rose Cardenas Hall North in the campus of University of Texas at Brownsville, Brownsville, Texas.

laws have been struck down in both state and federal courts as forms of voter suppression, but several laws will remain in effect for the 2012 presidential election. Thirteen states currently have new voting laws that could directly affect Latino voters (Florida, Georgia, Illinois, Iowa, Kansas, New Hampshire, Rhode Island, South Dakota, Tennessee, Texas, West Virginia, Virginia and Wisconsin). These laws range from shorter voter registration periods and photo ID requirements, to restrictions on early and absentee ballots. Organizations like the Advancement Project, estimate that nearly ten million Hispanic voters could be negatively affected by these new restrictions. Furthermore, new immigration laws, high crime, lack of access to disability services, rising unemployment and family responsibilities will continue to serve as obstructions to Hispanic participation in the political process.

Reminders of increasing Latino political clout are visible. This year Julian Castro, the Mayor of San Antonio, became the first Hispanic to deliver the keynote address at the Democratic National Convention. Mr. Rubio was heavily considered as a possible running mate for Mr. Romney. Ms. Martinez took center stage

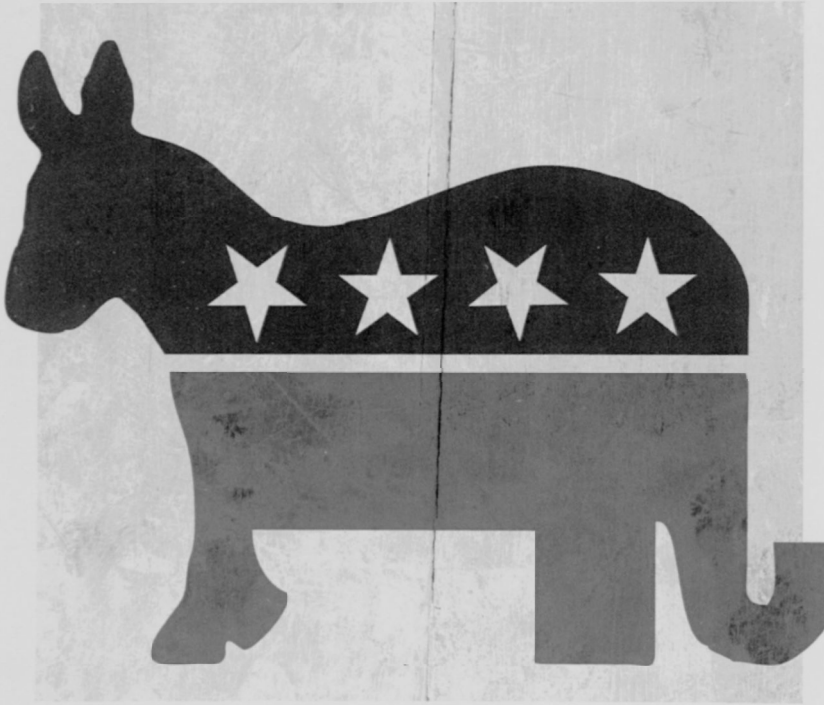
at the Republican National Convention, moving the crowd with her anecdotes on life as a Hispanic woman. There are two Latino senators, twenty-four Hispanics in the House of Representatives and one Supreme Court Justice of Hispanic descent. Latinos may still be a minority within the electorate, but the political establishments on both sides of the aisle can no longer ignore their existence. Mainstream politicians across the country are eagerly trying to engage the Hispanic community, from former Governor Jeb Bush (R-FL) chairing events for the Hispanic Leadership Network, to former Speaker of the House Newt Gingrich (R) creating the "Americano", a conservative, bilingual commentary website. The days of placating Hispanics through superficial "taco politics" are behind us, and increasingly, there are examples of political pressure from the Latino community exceeding the bounds of the campaign season and influencing the decisions of our elected officials. The Hispanic movement is still in its gestation phase, but the increase in population provides Latinos with an amazing chance to define their future. The opportunity is ours for the taking. Whether Latinos decide to fully embrace it, only time will tell. **NB**

SPLITTING TICKETS: ELASTICITY, CANDIDATE SELECTION, AND WAVES

by Samuel Stone

The last time Rhode Island voted for a Republican nominee for president was in 1984, a year in which only Minnesota – Democratic nominee Walter Mondale’s home state – and the District of Columbia voted Democrat. In the 28 years and six elections since, the state has voted for the Democrat running for president by an average of 23.5 percent and is expected to do so by a similar margin in 2012. Nevertheless, the state has not elected a Democratic governor since 1992, and between 1976 and 2007 Republicans held one of its United States Senate seats. This phenomenon of people voting for one party’s presidential nominee and then voting for the other party’s congressional or gubernatorial candidates is not confined to Rhode Island. North Dakota, which has voted for Democratic presidential nominees in only five out of the last thirty presidential elections, had an all-Democratic congressional delegation between 1987 and 2010. Most of the states in New England have followed a similar pattern, as have a number of states in the Mountain West, Hawaii, Alaska, and West Virginia.

Why are so many people willing to split their tickets and vote for a Democratic president but a Republican member of Congress or vice versa? The answer is good candidate recruitment and the elasticity of the states involved. Elasticity is a term in the political lexicon coined by political guru and statistician Nate Silver of the New York Times’ 538 blog. In short, elastic states are those where there are a large number of independent voters, regardless of whether the state is considered a “swing” state or not in presidential races. Rhode Island is very Democratic, with a full 41 percent of voters identifying with that party. Nevertheless, there are an astounding 49 percent unaffiliated voters, and only 10 percent Republicans. Rhode Island is



elastic and usually votes for Democrats because there are a lot of Democrats and a lot of unaffiliated voters. If those unaffiliated voters were presented with a viable Republican option, they may support it and swing the election to Republicans as they have done repeatedly.

The examples of states like Rhode Island are many and varied. A number of heavily Democratic states have a history of moderate Republican governors and senators. Perhaps most prominent among them in recent years are the pair of women representing Maine in the Senate – Olympia Snowe and Susan Collins – who have served together since 1995. John Chaffee and his son Lincoln, who represented Rhode Island in the Senate, are also prime examples (the younger Mr. Chaffee is now the independent governor of the state). Former Governor Linda Lingle won two terms in Hawaii and is currently running for the Senate. This year, there are two competitive Senate elections in New England featuring pro-choice, moderate Republicans in the form of Senator Scott Brown of Massachusetts and Linda McMahon in Connecticut. Finally, Maine is poised to elect Angus King, one of its two former

independent governors, to the Senate to replace the retiring Ms. Snowe. All of these states have large numbers of Democrats, as well as large numbers of unaffiliated voters.

Examples in the reverse are also many. In 2006 and 2008, a number of Democrats were elected to the Senate in traditionally Republican, but elastic, states. Mark Begich of Alaska, Jon Tester of Montana, and Kay Hagan of North Carolina are only the prime examples. In 2010, Joe Manchin III won the open Senate seat in West Virginia, and this year Heidi Heitkamp, a former state attorney general, is keeping the open Senate race in North Dakota competitive for Democrats in a state that bleeds crimson.

Elasticity is not the only force at work; it tends to work best when what we can refer to it as the minority party—Republicans in Massachusetts for example, or Democrats in West Virginia—pick the right candidate or when the

incumbent candidate from the majority party has a scandal. In recent years Democrats have been better at picking the right candidates in elastic states, but traditionally Republicans also had an excellent track record.

The easier cases are those where the incumbent of the majority party has some sort of scandal and the minority party picks the right candidate for the state or district. This type of scenario is currently occurring in the Massachusetts 6th congressional district between Congressman John Tierney (D) and Richard Tisei (R), a former state senator. Mr. Tisei is inherently moderate, openly gay, pro-choice, and has a generally sterling personal record. Mr. Tierney, on the other hand, has been plagued by financial scandals involving his wife and her brother in the past years, and Mr. Tisei's campaign has capitalized on that. The race is currently considered a tossup in a state where Democrats hold every single congressional district.

Even when there is no scandal, the minority party can win in an elastic state with the right candidate. West Virginia has voted Republican in recent presidential

elections, but both its senators have been Democratic since 1959. That run was threatened in 2010, when a special election was held to fill the Senate seat of longtime Senator Robert Byrd (D), who passed away that summer. Democrats, however, recruited popular governor Joe Manchin III to run. Mr. Manchin is the quintessential West Virginia moderate; as it became increasingly clear that 2010 was a terrible year for Democrats, Mr. Manchin distanced himself from his party by highlighting his pro-coal stance. In order to do so, he ran an add in which he literally shot a bullet through a copy of the cap and trade bill nailed to a tree. Mr. Manchin went on to win 53.5 percent to 43.4 percent. Running for a full six-year term in 2012, he has run a new ad in which he carries a rifle, looks at the camera, and says that voters do not need to see him shooting the cap and trade bill again because he “already killed it.” He is expected to win by a wide margin in the conservative state – as is Mitt Romney.

Bad candidate selection can also bring down a party in an elastic state. While 2010 was a wave election for Republicans, picking the wrong candidate cost the Republican Party three seats in the Senate, two of which were in elastic states. Sharon Angle in Nevada, Ken Buck in Colorado, and Christine O'Donnell in Delaware lost races that were Republican to lose. Of the three, Delaware is a simpler case – while the state is heavily Democratic and inelastic, now former Congressman Mike Castle, the candidate favored by the Republican establishment and who would have likely prevailed over Democrat Chris Coons, was a staple of Delaware politics and a scion of moderation that made him the favorite. When he lost the Republican primary to Tea Party-backed Ms. O'Donnell (of “I’m not a witch” fame) the race was all but over as could be expected in a deep blue state.

Colorado and Nevada have similar stories but

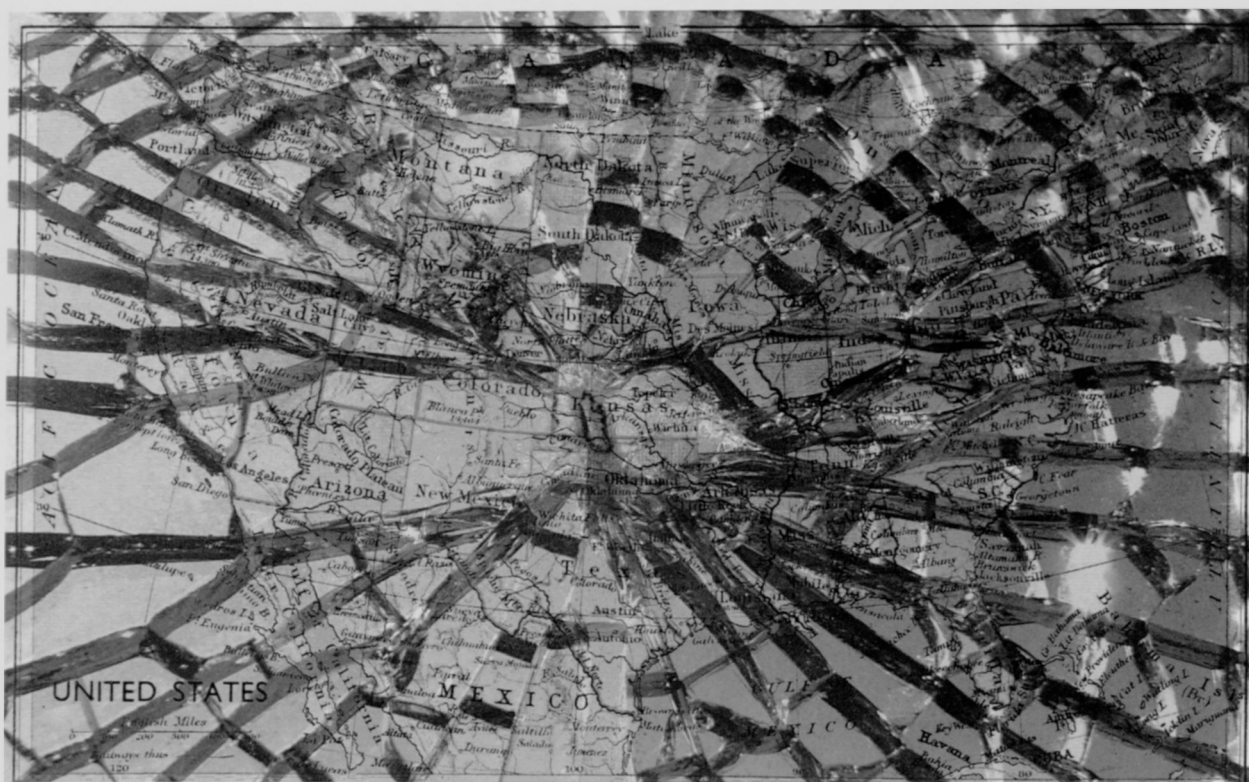
show how bad candidate selection can be devastating in states that have traditionally voted Republican in presidential elections but are elastic. In both cases, the candidates were portrayed as extreme Tea Partiers, whose reputations were enhanced by the candidates’ own statements. Ms. Angle famously said that a possible solution for the country’s healthcare dilemma was for patients who could not afford healthcare to barter with their doctors. As an example of what could

be bartered, she offered chickens. She lost the election to the highly unpopular Harry Reid by five points. Had the establishment-favored candidates won the primaries, Mitch McConnell would be only two seats away from becoming majority leader today, instead of four.

A final factor that can affect the phenomenon of ticket splitting is whether the election is a wave election or not. Wave elections are those in which one party makes large gains because of a national mood in its favor or against the other party. Both the 2006 and 2008 elections were Democratic waves, while 2010 was a Republican one, meaning that the last non-wave election in recent years was in 2004. Often times, a the “wave” can push candidates of the favored party to victory in states where they would not usually win regardless of

elasticity or candidate selection. Arguably, this was the case in some Senate races in 2006 and 2008. Elasticity and candidate selection can, however, beat a wave, as Senator Michael Bennett (D-CO) and Mr. Reid saw in their 2010 reelection races. In 2012, those two traits are even more important than in wave elections, as can readily be seen in the Massachusetts, Connecticut, Maine, Nevada, Arizona, North Dakota, and Montana Senate races. Whether events play out differently in this non-wave year is yet to be seen, but the influence of elasticity and good (or poor) candidate selection cannot be understated. **NE**

“Why are so many people willing to split their tickets and vote for a Democratic president but a Republican member of Congress or vice versa? The answer is good candidate recruitment and the elasticity of the states involved”



THE VAGARIES OF REDISTRICTING

by Lucas Botello

Every ten years, each state is required to redraw the boundaries of its Congressional districts as a means of ensuring that representation appropriately reflects population. Each district must be home to approximately the same number of citizens; but where the actual district lines fall is, in the vast majority of states, left for state legislatures to decide. After the nation's most recent census in 2010, state legislatures across the country again had the opportunity to redraw the boundaries between their Congressional districts. Today, these redistricting decisions are producing anomalies rarely seen in Congressional races.

State legislatures are comprised of partisan elected leaders who therefore want to draw district lines in a way that enables their party to be more likely to win. To achieve this, gaming often occurs; the state is sliced up in such a way that like-minded voters are concentrated into

enough districts, increasing the chances that candidates from their preferred party will be elected. Conversely, voters from one political party will be divided into many districts that have larger numbers of voters from the other party in order to dilute their voting power. In political lexicon, this process is known as gerrymandering.

This process often favors Congressional incumbents even if their state counterparts are from the opposing party. If Republicans dominate a state legislature, for example, they will often (but not always) want to include as many Democratic voters in an incumbent Democrat's district, thereby make the surrounding Republican districts even safer for Republican incumbents.

This is the way the process currently works in Ohio. Ohio's state legislature is controlled by Republicans who worked closely with aides of Republican Speaker of the U.S. House of Representatives John Boehner (OH-8). A recent report titled the "Ohio Redistricting Transparency Report: The Elephant in the Room" exposed the backroom dealing involved in the redistricting process. The report details the weekly meetings held among mapmakers and representatives of the GOP-controlled State Apportionment Board, which draws the legislative lines. As expected, the study concludes, this process

produced a situation favorable to Republicans. This phenomenon is not limited to Republicans, as Democrats gerrymandered Illinois in a similar way.

Another complicating factor is that slow population growth in a state might result in a state losing seats in Congress, or vice versa. Of course, when a state loses seats, not all the incumbent Congressional Members can continue to represent that state. This was the case in both Ohio and Iowa. After the 2000 Census Ohio had eighteen seats. Now, Ohio has lost two of seats to redistricting, leaving it with sixteen seats. Before the last redistricting Iowa had five Congressional districts. Now the state has only four. This leaves incumbents playing musical chairs; when the music stops and the maps are released, there will be two incumbents running for the same seat.

One of those seats being fought for is Ohio's 16th district (OH-16), where the race between incumbent Republican Congressman Jim Renacci and incumbent Democratic Congresswoman Betty Sutton is unfolding. Sutton's district was eliminated by the Republican state legislature, so she decided to challenge freshman Mr. Renacci in the newly created 16th—a district. This is the same district President Obama would have won with 47 percent of the vote in 2008. Mr. Renacci has represented more citizens within the district, but the race is considered a toss-up. The fact that this is an unusual match-up – between two sitting incumbents – cannot be overstated.

The Democratic Congressional Campaign Committee has reserved \$2.2 million in airtime in the Cleveland media market, while the National Republican Congressional Committee has reserved \$1.5 million in airtime. Much of this Congressional election will depend on how well President Obama and Republican nominee Mitt Romney perform in the district. Both campaigns will be spending even larger amounts in Ohio, a key swing state.

Many Ohioans, and especially Ohio Democrats, are upset with the outcome of the Republican redistricting and have put a proposition on the November ballot which, if approved by Ohio voters, would create an independent commission responsible for drawing the Congressional district lines. This commission would create districts that were more competitive, which theoretically would create more responsive elected

officials and more moderate candidates.

Unlike Ohio, Iowa has already undergone reforms to fight the polarizing effects of redistricting by creating a special five-member Temporary Redistricting Advisory Commission. The commission is responsible for developing a new redistricting map that the state legislature and the governor must approve by an up-or-down vote without giving the legislature or the governor an opportunity to amend it. The process is designed to prevent political state actors from creating seats favorable to incumbents. As a result, there is a near-even mix of registered Democrats and registered Republicans in each district, and all four of Iowa's seats are viewed as contested.

As in the Ohio 16th district, the loss of one seat in Iowa has forced two incumbents to run against each other. Republican Tom Latham and Democrat Leonard Boswell are competing for Iowa's 3rd Congressional District located in the Western and more conservative part of the state. Mr. Latham is favored to win since the newly redrawn district has 15,000 more registered Republicans than Democrats, and the district would have marginally voted for Republican presidential candidate Senator John McCain in 2008. Additionally, Mr. Latham has had a fundraising lead boosted by the support of his close friend and political ally Mr. Boehner. However, Democrats have not given up on Mr. Boswell, who has received fundraising support from Minority Leader Nancy Pelosi (CA-8). Political commentators believe that this race, like the Renacci-Sutton race in the OH-16, will largely hinge on how well Presidential candidates Mitt Romney and Barack Obama perform in the district. And, since Iowa is a swing state like Ohio, both Presidential campaigns are pouring in lots of money to appeal to voters.

Incumbent-on-incumbent races are rare, with spikes following population movements measured by our nation's decennial census. What is particularly unique about this season, however, is the presence of a Presidential election. As a political phenomenon, redistricting only collides with a Presidential election every 20 years. Ohio's 16th district and Iowa's 3rd district, two swing districts in two swing states, will be among the most heavily targeted by both presidential campaigns. The only thing missing is an Election Day solar eclipse. **NE**

Back Page

INTRODUCING THE NOTA BENE SUPREME COURT BUREAU

by David Bender and Zachary Prince

The presence of GW Law in the heart of our nation's capital is one of the primary reasons that prospective students are attracted to the school. Upon arrival at 20th and H, this becomes a familiar refrain: one of the great things about attending law school in Washington, D.C. is the everyday proximity to where laws are made. Nothing typifies this concept better than the fact that GW law students have the luxury of walking (or taking a cab if you aren't a fan of long early-morning walks through the National Mall) to the U.S. Supreme Court to hear oral arguments. Having taken this journey before, braving an early morning hail storm with fellow classmates while standing in line on the steps of the Court, I can personally attest that it is well worth the effort.

There is nothing quite like seeing the Justices engage in a colloquy with some of the most renowned oral advocates in the world. Beyond the fascinating

substantive legal issues, hearing the Justices dissect the merits of the hardest cases, aided by the most refined oral arguments you will ever hear, is invaluable to a well-rounded legal education. The atmosphere is tense but electric, particularly for the really controversial cases. And because there are no video recordings at the Court, being there in person is the only way to really experience it. Unfortunately that means you either need to get to the Court and wait in line at an unreasonably early hour, or be well-connected.

That's where the Nota Bene comes in: we're going to make you well-connected, if only for the morning. We are going to allow the entire student body to benefit from these experiences. Our plan is to send student writers to several of the most interesting cases heard by the Supreme Court each term, press-pass in hand. We only ask that you write an article about the oral arguments for the Nota Bene, which will appear in a new section of the newspaper dedicated to the Supreme Court. So join us, contribute to creating an informed student body, and become a Nota Bene Supreme Court correspondent.

In order to become a Nota Bene SCOTUS correspondent, please contact David Bender via email at djbender@law.gwu.edu. **NB**

2012 ELECTION GAMES

Courtesy of The Nota Bene Staff

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BARACKOBAMA
CAMPAIGN
CAUCUS
DEBATE
DEMOCRACY
DEMOCRAT
ECONOMY
EIGHTEEN
JOBS
MITTROMNEY
NOVEMBER
PLATFORM
POLITICS
PRESIDENTIAL
REPUBLICAN
RESIDENT
TERM
TUESDAY
VOTING
WHITEHOUSE

... Seems like people on

facebook

have it all figured out ...

PRESIDENT OBAMA WILL WIN THE 2012 ELECTION IF _____?

...he fails to execute and fails to reach out to
Libertarians.

...he wins Ohio.

...he really does know better than everyone else.

...he gets more than 270 electoral votes.

...life begins at selection.

... if the state polls are proven to be a more
accurate indicator than the national polls

...ideological and rhetorical orators make good
presidents.

.....if the 47% lazy people get out and vote.

MITT ROMNEY WILL WIN THE 2012 ELECTION IF _____?

...he's as good an snake oil salesman as he
thinks he is.

...he wins Ohio.

...we [Mormons] all fast.

...he gets more than 270 electoral votes.

...life begins at erection.

...those who love money more than God get
their way.

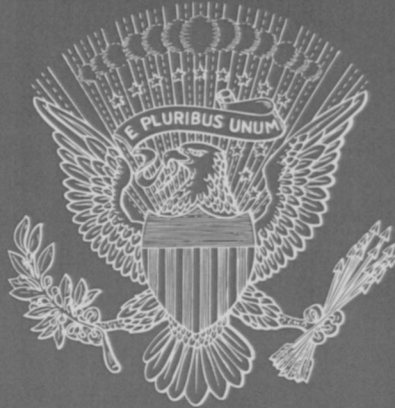
...the American people actually see our coun-
try having a future.

...will win with 57% if the polls are skewed as
usual for the Democrats by the media.

SNIPPETS

| by Christen Gallagher





**KEEP
CALM
AND
VOTE
WISELY**